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FILED ELECTRONICALLY AND VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk

South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Petition of Charter Fiberlink SC – CCO, LLC for Arbitration
of Certain Terms and Conditions of Proposed Agreement with
Piedmont Rural Telephone Cooperative, Inc. Concerning
Interconnection Under the Communications Act of 1934, as Amended by
the Telecommunications Act of 1996
Docket No. 2006-142-C, Our File No. 557-11361

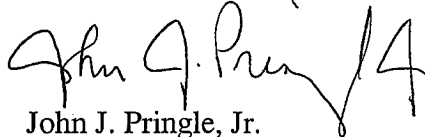
Dear Mr. Terreni:

Enclosed is the **Reply to Return to Motion of Charter Fiberlink SC – CCO, LLC** filed on behalf of Charter Fiberlink SC – CCO, LLC in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the bearer of these documents.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,



John J. Pringle, Jr.

cc: C. Lessie Hammonds, Esquire
John Bowen, Esquire/ Margaret Fox, Esquire
Charles A. Hudak, Esquire

Enclosures

THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION OF THE FORM OF THE SIGNATURE, OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2006-142-C**

In re:)
)
Petition of Charter Fiberlink SC – CCO,)
LLC for Arbitration of Certain Terms and)
Conditions of Proposed Agreement with)
Piedmont Rural Telephone Cooperative,)
Inc., Concerning Interconnection under the)
Communications Act of 1934, as amended)
by the Telecommunications Act of 1996)

**REPLY TO
RETURN TO MOTION**
(on behalf of Charter
Fiberlink SC – CCO, LLC)

Charter Fiberlink SC – CCO, LLC (“Charter Fiberlink”) respectfully submits this Reply to the Return filed by Piedmont Rural Telephone Cooperative, Inc. (“Piedmont”) to Charter Fiberlink’s Emergency Motion for Expedited Interim Relief (the “Return”). In response to Piedmont’s Return, Charter Fiberlink shows the following:

1. Piedmont’s assertion that it is not subject to the Federal Communications Commission (“FCC”) regulation requiring incumbent local exchange carriers (“LECs”) to immediately provide interim arrangements for the exchange of telecommunications traffic with a requesting telecommunications carrier is simply wrong. The regulation, 47 C.F.R. § 51.715, is part of the FCC’s regulations concerning reciprocal compensation for the transport and termination of telecommunications traffic.¹ See title of subpart H of part 51 of 47 C.F.R., preceding 47 C.F.R. § 51.701. Like all of the FCC’s reciprocal compensation rules, § 51.715 is governed by 47 U.S.C. § 251(b), not § 251(c). The provisions of § 251(b) apply to *all* LECs, including both competitive LECs such as Charter Fiberlink and incumbent LECs such as Piedmont. Piedmont’s reliance on the exemption provided by 47 U.S.C. § 251(f)(1) in arguing that § 51.715 “does not even apply to

¹ Although Piedmont quotes on page 2 of its Return a sentence fragment from the FCC’s 50 page discussion of reciprocal compensation requirements, Piedmont fails to explain why the FCC inserted this comment into the part of its order titled “Obligations Imposed on LECs by 251(b).”

Piedmont” is unfounded. While Section 251(f)(1) would provide Piedmont an exemption from § 251(c), Piedmont enjoys no such exemption from the requirements of § 251(b).

2. Piedmont next contends that § 51.715 requires an incumbent LEC only to transport and terminate traffic originated by a requesting telecommunications carrier. And, because Piedmont is transporting and terminating traffic originated by Charter Fiberlink, it contends that it is not required to transport and terminate calls originated by Piedmont that are intended for Charter Fiberlink customers. Although subsection (a) of § 51.715 refers only to an “incumbent LEC ... provid[ing] transport and termination of telecommunications traffic,” it is apparent from the other subsections of § 51.715 that the rule clearly contemplates and requires the two-way exchange of traffic. Section 51.715(b) provides that “[u]pon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic *at symmetrical rates*.” The requirement of symmetrical rates is nonsensical unless the interim arrangement includes the two-way exchange of traffic. Further, section 51.715(d) requires a state commission to true-up payments under such an interim arrangement to the transport and termination compensation established in a subsequent arbitration, providing that “[s]uch adjustments to past compensation shall allow *each carrier* to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705.” Again, the requesting carrier under an interim arrangement would receive no compensation if the interim arrangement only required the incumbent LEC to transport and terminate traffic originated by the requesting carrier. Simply stated, Piedmont’s interpretation of § 51.715 is contrary to the plain language of the rule.

3. Piedmont's conduct in this matter has been exactly the sort of anticompetitive conduct that the FCC recognized when adopting §51.715. Specifically, in the *Local Competition First Report and Order*, the FCC stated:

We are concerned that some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC. In particular, a new entrant that has already constructed facilities may have a relatively weak bargaining position because it may be forced to choose either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process. To promote the Act's goal of rapid competition in the local exchange, we order incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis, pending resolution of negotiation and arbitration regarding transport and termination prices, and approval by the state commission.²

In order to prevent incumbent LECs from delaying competitive entry by prolonging interconnection negotiations, the FCC required them *immediately* to provide interim traffic exchange arrangements. This Piedmont has failed and refused to do. The Commission must order Piedmont to comply with the law.

4. Piedmont seeks to cloud the real issues in this matter by accusing Charter Fiberlink of inconsistency concerning whether and to what extent Charter Fiberlink may be providing local exchange services within Piedmont's local service area, as opposed to within adjacent exchanges that are part of the extended area service ("EAS") that Piedmont provides to its customers. Charter Fiberlink has consistently told Piedmont that it has no intention of marketing its local exchange services in Piedmont's service area at this time, but Charter Fiberlink cannot and will not agree with Piedmont that it will not do so. Agreements between competitors or potential competitors not to compete for particular customers are *per se* violations of the federal antitrust laws. Charter Fiberlink

² First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (rel. August 8, 1996) at ¶ 1065 (subsequent history omitted).

has also acknowledged serving four (4) customers who Piedmont asserts reside within its local service area. Charter Fiberlink has explained that it utilizes a database that is widely employed in the telecommunications industry to determine the rate centers in which customers and potential customers are located for purposes of directing its marketing and assigning telephone numbers to its customers. This database indicates that all four customers identified by Piedmont are located in the Laurens rate center, not the Laurens Rural rate center where Piedmont is authorized to provide local exchange services. To date, Piedmont has provided Charter Fiberlink no evidence that these customers are actually located in the Laurens Rural rate center, as Piedmont contends.

5. Piedmont has expressed concern that the interim arrangement requested by Charter Fiberlink must be accurate and must provide for the exchange of traffic originated by and terminated to customers that Charter Fiberlink is actually serving. Charter Fiberlink proposed that the interim arrangement be modified to include the exchange of local traffic both originating and terminating in Piedmont's local service area, as well as EAS traffic, but Piedmont refused. Charter Fiberlink indicated a willingness to exchange traffic only on EAS routes even if it meant that Piedmont customers still could not call any Charter Fiberlink customers who may be located in Piedmont's local service area, but Piedmont refused.³ Piedmont's professed concern for Charter Fiberlink customers within Piedmont's service area rings hollow. Piedmont seeks to excuse its refusal to originate traffic to *any* of Charter Fiberlink's customers by its alleged concern that *four* of Charter Fiberlink's customers might not be covered by the interim arrangement.

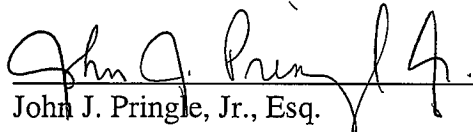
6. Finally, Piedmont seeks to fault Charter Fiberlink for allegedly failing to follow unspecified "industry standards" contained in ATIS-0300037, *Intercompany Responsibilities Within the Telecommunications Industry, Issue 3*. That document states on its second page that "NO

³ This offer presumed that Charter Fiberlink would be able to rapidly negotiate a further interconnection agreement with Piedmont in order to make sure that Charter Fiberlink customers would receive calls from Piedmont.

REPRESENTATION OR WARRANTY IS MADE THAT THE INFORMATION ... CONFORMS TO ANY STATUTE, GOVERNMENTAL RULE OR REGULATION" Charter Fiberlink's alleged failure to conform to unspecified "industry standards" cannot excuse Piedmont's refusal to comply with applicable law, which requires it to provide an interim traffic exchange arrangement "*immediately*" and "*without unreasonable delay.*"

WHEREFORE, for the foregoing reasons, Charter Fiberlink respectfully requests that the Commission promptly order Piedmont immediately to enter into an interim traffic exchange arrangement with Charter Fiberlink as required by 47 CFR § 51.715 and take such other and further actions as are just and reasonable.

RESPECTFULLY SUBMITTED, this 23^d day of May, 2006.


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